

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6576

Investigation Into the Existing Rates of Ludlow)	
Telephone Company, Northfield Telephone)	Hearing at Montpelier, Vermont
Company, and Perkinsville Telephone Company)	March 14, 2002

Order entered: 4/11/2002

PRESENT: Peter M. Bluhm, Hearing Officer

APPEARANCES: Dixie Henry, Esq.
for the Vermont Department of Public Service

John Lightbody, Esq.
Murray, Plumb & Murray
for Ludlow Telephone Company, Northfield
Telephone Company and Perkinsville Telephone
Company

I. SUMMARY

On October 25, 2001, the Public Service Board ("Board") opened this docket to investigate the existing rates of Ludlow Telephone Company, Northfield Telephone Company and Perkinsville Telephone Company ("the Companies"). Based on the evidence presented in this docket and on the stipulation of the parties, I conclude that the rates proposed by the parties are just and reasonable and that the Board should approve the Stipulation and close this rate investigation. In support of that conclusion, I adopt the substance of the findings proposed by the Companies and the Vermont Department of Public Service ("Department").

II. PROCEDURAL HISTORY

On October 25, 2001, the Board opened an investigation into the Companies' rates pursuant to 30 V.S.A. § 227(b), and appointed me as Hearing Officer.¹ I convened a prehearing conference in this matter on November 6, 2001. Dixie Henry, Esq., appeared on behalf of the Department. John Lightbody, Esq., appeared on behalf of the Companies.

1. Order of 10/25/01.

On March 8, 2002, the Companies and the Department submitted a stipulation of the same date (the "Stipulation"), as well as a cost of service analysis describing the Companies' original filing, a Stipulated Rate Design and a Proposed Refund Methodology. In the Stipulation, the Companies and the Department agreed that the rates resulting from their stipulated settlement are just and reasonable. A Proposed Board Order was submitted by the parties on March 12, 2002. A technical hearing was held on March 14, 2002. Several witnesses testified in support of the Stipulation. Witnesses were Lafayette Morgan, Lawrence Lackey and Christopher Campbell on behalf of the Department and Bryan Woltman, James Price and Michael Reed on behalf of the Companies.

By the Stipulation, the Companies and Department further agreed to waive their rights under 3 V.S.A. § 811 to file exceptions, present briefs, and make oral argument in the event the Hearing Officer issues a Proposal for Decision substantially in the form of the Proposed Order filed on March 12, 2002.

III. FINDINGS

Based upon the evidence of record and the testimony presented at the hearings, I submit the following findings to the Board in accordance with 30 V.S.A. § 8.

1. On December 3, 2001, the Companies filed a cost of service and earnings analysis that calculated the Companies' aggregate normalized revenues at present rates at \$4,126,663. Exhs. Joint-1 ¶¶ 1-2 at 1, Joint-2.

2. The Companies and the Department submitted a Stipulation, dated March 8, 2002, which is described above. Exhs. Joint-1, Joint-2.

3. The Stipulation provides that, for purposes of settlement, the aggregate intrastate revenue of the Companies shall be reduced by \$299,117, to \$3,827,546. This adjusted revenue amount is \$536,786 less than the Companies' filed revenue requirement of \$4,364,332. Exh. Joint-1 ¶ 2- 3 at 1-2.

4. The rate design agreed upon by the Department and the Companies will result in a reasonable determination of the Companies' revenue requirements and rates. Exh. Joint-1 ¶ 3 at 2, ¶¶ 6-7 at 2-4, ¶ 10 at 4.

5. The Companies' aggregate annual revenue adjusted to the Stipulated Rate Design is \$3,827,546. Exh. Joint-1 ¶ 3 at 2.

6. By implementation of the Stipulated Rate Design, the annual revenue of Ludlow

Telephone Company will be reduced by \$60,343 to \$1,888,917. Exh. Joint-1 ¶ 3 at 2.

7. By implementation of the Stipulated Rate Design, the annual revenue of Northfield Telephone Company will be reduced by \$232,144 to \$1,574,897. Exh. Joint-1 ¶ 3 at 2.

8. By implementation of the Stipulated Rate Design, the annual revenue of Perkinsville Telephone Company will be reduced by \$6,630 to \$363,732. Exh. Joint-1 ¶ 3 at 2.

9. The key principles followed by the parties in arriving at the Stipulated Rate Design were:

- (a) To reduce local residential and business rates, including Local Measured Service ("LMS") base rates at Northfield;
- (b) To restructure Northfield's LMS usage blocks to mirror those at Ludlow and Perkinsville;
- (c) To reduce Centrex rates at all 3 Companies;
- (d) To reduce intrastate access rates at all 3 Companies; and
- (e) To provide more rate uniformity among the three Companies in custom calling and non-recurring charges.

Exh. Joint-1 ¶ 6 at 2.

10. The Department and the Companies agreed to the following changes to the Companies' rate design:

A. Northfield:

- (i) Reduces its residential LMS base rate by \$1.65/month to \$14.90/month and reduces its residential unlimited/flat local rate by \$4.00/month to \$41.00/month;
- (ii) Reduces its business (including paystation line and ISDN line) LMS base rate by \$3.35/month to \$23.65/month and reduces its business (including paystation line and ISDN line) unlimited/flat local rate by \$9.00/month to \$50.00/month;
- (iii) Reduces its key system LMS base rate by \$1.80/month to \$25.20/month and reduces its key system unlimited flat rate by \$7.00/month to \$52.00/month;
- (iv) Reduces its private branch exchange (PBX) LMS base rate by \$6.00/month to \$34.50/month and reduces its PBX flat rate by

\$18.00/month to \$61.00/per month;

(v) Changes its LMS structure (minutes-of-use blocks) to make those rates uniform for all 3 Companies;

(vi) Reduces various Centrex rate charges;

(vii) Reduces various custom calling rates and adjusts non-recurring rates to make those rates uniform for all three Companies;

(viii) Reduces its intrastate originating carrier common line rate by \$0.00028/min. so as to make this rate uniform for all three Companies;

(ix) Reduces its intrastate access rates further by \$0.0105/min. (\$0.00525 on originating and \$0.00525 on terminating);

(x) Adjusts its intrastate high capacity special access rates to make these rates uniform with the current NECA Tariff 5 rates.

B. Ludlow:

(i) Reduces various Centrex rates by \$2.50/month;

(ii) Reduces various custom calling rates and adjusts non-recurring rates to make those rates uniform for all three Companies;

(iii) Reduces its intrastate originating carrier common line rate by \$0.00018/min. so as to make this rate uniform for all three Companies;

(iv) Reduces its intrastate access rates further by \$0.0105/min. (\$0.00525 on originating and \$0.00525 on terminating); and

(v) Adjusts its intrastate high capacity special access rates to make these rates uniform with the current NECA Tariff 5 rates.

C. Perkinsville:

(i) Reduces various Centrex rates by \$2.50/month;

(ii) Reduces various custom calling rates and adjusts non-recurring rates to make those rates uniform for all three Companies;

(iii) Reduces its intrastate access rates by \$0.0105/min. (\$0.00525 on originating and \$0.00525 on terminating); and

(iv) Adjusts its intrastate high capacity special access rates to make these rates uniform with the current NECA Tariff 5 rates.

11. The rates established by the Stipulated Rate Design as described above are just and reasonable. Findings 1 through 10, above.

12. Northfield shall have slightly higher residential, business, and Centrex rates, reflecting the fact that the Northfield local calling area reaches approximately twice the number of subscribers as do the calling areas of Ludlow and Perkinsville. The Northfield local calling area encompasses approximately 53,000 subscribers, while the Ludlow exchanges and Perkinsville local calling areas range from approximately 22,000 to 29,000 subscribers. Exh. Joint-1 ¶ 8 at 4.

13. The Companies shall file with the Board, no later than 30 days following issuance of an Order of the Board approving the Stipulation, tariff pages replacing the affected pages of their Tariffs currently on file with the Board. Exh. Joint-1 ¶ 11 at 4.

14. The Companies shall implement the Stipulated Rate Design within two monthly billing cycles after the Board's Final Order approving the Stipulated Rate Design. Following such implementation, the Companies shall promptly refund excess revenues earned between October 25, 2001 (the date of the Board's Order opening this docket) and the date the Stipulated Rate Design is implemented, in the manner set out in Exhibit STIP-4 attached to the Exh. Joint-1. Exh. Joint-1 ¶ 12 at 5.

15. The reduction in access charge rates will be prospective only, and the amount which otherwise would be refunded to access customers will be held by the Companies for the following purposes, and interest shall be added to the Access Refund Amount at six percent (6%) per year from the date of implementation of the Stipulated Rate Design:

- (1) To be held as a reserve to offset (or partially offset) the cost incurred by schools in the Companies' serving territories of participating in the Distance Learning Plan developed in Docket 6167, including but not limited to purchasing services at the Companies' tariffed rates; or
- (2) For such other use as the Board shall approve.

Exh. Joint-1 ¶ 12 at 5 and Exhibit STIP-4 ¶ 3 at 2-3.

16. Northfield Telephone Company will provide a three-month grace period, beginning on the tariff effective date of the stipulated rate changes, during which non-recurring charges associated with converting any current (as of the tariff effective date) residential or business customer from LMS to unlimited/flat rate basic local service, or from unlimited/flat rate basic

local service to LMS, will be waived. Exh. Joint-1 ¶ 13 at 5.

17. The Department and the Companies have reviewed the separations factors used by the Companies in the Companies' Studies and find that those factors are consistent with the Companies' interstate separations factors. Exh. Joint-1 ¶ 14 at 5.

18. The Companies will continue to maintain sufficient back-up batteries and/or generators to enable them to provide sufficient electrical power so as to be able to provide telephone service indefinitely in the event of a widespread electrical outage, subject to the reasonable availability of fuel and spare parts for the generators and other equipment involved. Exh. Joint-1 ¶ 15 at 5.

19. With respect to broadband telephone service, each of the three Companies will continue to design and construct its outside plant for the provisioning of broadband services and the convergence of voice and data networks. In addition, the three Companies will take the following actions with regard to the deployment of broadband services to their customers:

(1) Planned deployment. The three Companies agree to the following:

- (i) To complete by the end of the second quarter of 2002 deployment of Digital Subscriber Lines ("DSL") in two central offices and five digital serving areas across the three Companies; or
- (ii) To complete by the end of the second quarter of 2002 deployment in two central offices and five digital serving areas across the three Companies, an alternative broadband service offering a functionality similar to or better than DSL to consumers and similar or better prices; or
- (iii) Notify, by the end of the second quarter of 2002, the Department and the Board that the deployment of broadband service to two central offices and five digital serving areas was not completed, the reasons such deployment was not completed, and the adjusted schedule.

(2) Additional deployment. The three Companies agree to submit to the Department and the Board within nine months of the date of a Board Order approving this Exh. Joint-1 either:

- (i) A timetable for the deployment in all remaining central offices and digital serving areas of DSL service or an alternative broadband service offering a functionality similar or better than DSL to consumers and similar or better prices

by the end of 2003; or

(ii) A business analysis of deployment of additional broadband service deployment in the remaining central offices and digital serving areas and a timetable for the deployment of such additional broadband services in additional central offices and digital serving areas by the end of 2003, if any. The Companies agree that a business analysis shall be performed for each central office and digital serving area in which the Companies do not plan such additional broadband deployment, except the analysis for any digital serving areas with substantially similar characteristics may be consolidated. The business analyses shall include:

- (a) Anticipated capital expenditures by major categories, with individual expenditures with a cost of at least \$10,000 additionally itemized within each major category;
- (b) Other anticipated expenditures by major categories, including but not limited to transport (bandwidth) costs;
- (c) Anticipated end user rates; and
- (d) Expected penetration levels, which shall be derived from prior Vermont-specific deployments of broadband service and other comparable TDS broadband service deployments.

Exh. Joint-1 ¶ 16 at 5-6.

IV. DISCUSSION AND CONCLUSIONS

The Board opened this investigation into the rates charged by the Companies pursuant to 30 V.S.A. Section 227(b). The standard for review of rates, under this section, is whether the rates are just and reasonable. The Department and Companies agree that the rates established by the rate design embodied in the Stipulation result in rates that are just and reasonable.

I have reviewed the Stipulation and the evidence provided in support of it. I have also reviewed the cost of service and earnings analysis originally filed by the Companies at the outset of the case and the stipulated rate design and refund methodology more recently filed by the parties. I have also considered the responses of the Companies and the Department to my questions at the hearing.

Just and Reasonable Rates and the Stipulation

I repeatedly encouraged the parties in this docket to work hard to settle their differences. I did so primarily to minimize the cost that a fully litigated case would have on a small company.² Consistent with my request, the parties did settle the case, and they submitted a Stipulation before the Department was required to prefile testimony. Since the Stipulation is of a "bottom line" nature, the parties did not file a revised cost of service analysis consistent with their revenue requirement recommendation.

The parties did exactly as I asked. They worked hard to achieve a result that they both could support. They were unable to reach any agreement, however, other than a "bottom line" settlement that does not include a detailed cost of service analysis. Partly for that reason, at the hearing on the Stipulation, I inquired about the basis of the settlement. I was not able to fully satisfy my curiosity about the value of the settlement and whether it is just and reasonable. My two residual concerns involve the absence of a final cost of service stipulation and the absence of objective indicia about the Department's advocacy.

Cost of Service Analysis

Early in this docket, the Companies submitted an original cost of service analysis; the Stipulation did not include a final cost of service analysis. As a result, the Stipulation will not produce a match, even for one instant, between the Companies' claimed costs and their revenues. The Stipulation reduces the Companies' revenue requirement by \$536,786 from the original filing, yet the parties do not explain the reasons for that reduction. It might be due to disallowance of particular booked expenditures, to disallowance of rate base, to changes to capital structure, to reductions of allowed return, or to some combination of the above.

This uncertainty affects the future in two ways. First, it reduces the probability that the result in this docket will have significant bearing on future rate-setting exercises affecting the Companies. Suppose the Board were to commence a new rate review one year from now.³ The Companies then would file a new cost of service. That filing would be similar to the filing the Companies made at the beginning of this docket. If so, it would show a revenue shortfall in the range of \$500,000, but this docket would not provide any assistance in navigating the difference.

2. Total TDS intrastate revenues under the Stipulation are \$3.8 million per year.

3. This is entirely a hypothetical. I am not recommending any such review.

I do not want to overstate the value of a detailed cost of service analysis, since the pattern of a future rate case can depend as much on the behavior of the Companies after its rate case docket is closed as upon the outcome of the docket itself. Cost of service filings are based on actual test year costs. Thus if the Companies happen to reduce their actual spending after this docket concludes by approximately \$500,000, future test year filings might match the results of the Board's Order here. However, if the Companies should decide not to make those spending adjustments, the Board in the future might again be faced with a test year spending pattern that is quite different from that contemplated in the final Order here, regardless of whether this docket is closed with a detailed cost of service analysis. Thus the value of the settlement here in the future could be controlled as much by the Companies' post-Order behavior as by the presence or absence of a final cost of service analysis.

The absence of a detailed cost of service analysis imposes a second constraint. Even if no rate case is contemplated for the Companies themselves, rate base and spending data from the Companies will have less value in evaluating other companies. For example, expense data submitted by the Companies might include expenses, such as lobbying expense, that are not allowed under Board policy. Or, the Companies' rate bases might include facilities that provide unregulated services. Thus, it would not be fully valid to use the Companies' reported financial data for inter-company comparisons.⁴

In summary, the filing of a final cost of service analysis here would give greater meaning and texture to future work by the Board. The added data would give meaning both to the future work regarding the Companies' own rates and also for rates charged by other local exchange carriers.

Effective Advocacy

My second broad concern relates to the state of the record on the question of whether the Stipulation is just and reasonable. The Stipulation was filed before the Department was required to prefile its testimony. At the hearing on the Stipulation I inquired at length into several aspects

4. The error lies in some cases for and in some cases against the Companies' interests. To the extent that the Companies' annual reports include operating costs that are high in relation to comparable companies, that would tend to increase the probability of a subsequent Board review. However, to the extent that the Companies' annual reports include rate base that would not be allowed under existing Board policy, the apparent need for revenue would be greater, and the error would favor the Companies.

of the Department's actions preceding the settlement. The Department was reluctant to testify concerning the issues it had explored with the Company, and the Company also expressed reluctance. Because the parties raised objections on this point, I generally limited my questioning to areas involving the scope of the Department's review and allowed the parties to decline to report on any discussions they held on the issues.⁵ As a result, I was not able to obtain a detailed understanding of the nature of the disputes between the parties, how those disputes relate to existing Board precedent, and how much each party compromised in reaching the Stipulated result.⁶

At the outset, it is important to note some of the policy reasons that support the approval of settlements. At the least, a policy of encouraging settlements can reduce litigation cost, and this is a matter of great importance to the smaller utilities such as these Companies. But in addition, there are substantive reasons why the Department should be afforded substantial discretion in settling rate dockets. A filed settlement usually represents only one of hundreds of plausible results in a contested proceeding. When the Board grants deference to the Department's reasonable judgment that deference strengthens the Department's bargaining power in future cases. That in turn can improve results for customers. It may even be the case that the Department should have broad latitude to enter unexplained "bottom-line" settlements because, over the long run, granting such discretion will actually increase customer benefits.

Moreover, the Board should not draw any adverse inferences from the reluctance of the parties to report on their settlement discussions. Under Vermont law, statements made during settlement negotiations are not relevant evidence.⁷ The Board does recognize and should continue to recognize that principle in the same manner as the Vermont courts.

The Board's quasi-judicial process, however, depends heavily upon the Department to raise issues and to pursue them effectively. Inherent in any settlement, therefore, is a risk of ineffective advocacy. In a given case, the Department might know all the relevant facts yet for some reason neglect to assert a plausible claim, or it might yield an important point on which it

5. See, e.g., tr. 3/14/02 at 25-34.

6. My concern is exacerbated by the fact that this docket resulted from an order of investigation into issues *sua sponte* by the Board and was not originally initiated by a motion from the Department.

7. See, Vermont Rules of Evidence, Rule 408.

would have been highly likely to prevail.⁸ With the limited information typically available to the Board in a bottom line settlement, any such failure of advocacy would be invisible.

Of course a limited record is still satisfactory if the Public Service Board acts solely as the judge of disagreements between contending parties, one of whom happens to be the Department. However, the Board is not a civil court that decides private controversies. The Board also has an affirmative obligation to establish just and reasonable rates. Therefore it is important for the Board to have at least some assurances that the Department's advocacy has been appropriately assertive. I conclude that even in a settled case the Board should require some objective evidence, beyond the bare agreement of the parties, that a proposed rate settlement is just and reasonable.⁹

Prefiled testimony can fulfill this need. Commonly a settlement produces a bottom line revenue requirement that reflects only a portion of the revenue reductions that were claimed in the Department's prefiled testimony. This can offer the Board at least a very rough basis against which to judge the final settlement. If the Department's prefiled testimony appeared to have been soundly based and well prepared, the Board might expect to see adoption of a substantial portion of the Department's position in the final Stipulation. Conversely, if the Department's positions were contrary to law or known facts, the Board would expect the Department to have a lower "batting average" in the final settlement. In this docket, however, the Department did not prefile testimony, and it is impossible to ascertain whether a large or small portion of the Department's proposed adjustments have been adopted.

A detailed cost of service analysis can also provide objective evidence that a settlement is just and reasonable. Such a filing can be evaluated in several ways. The Board can determine whether the Companies' capital structure is efficient and whether its rate of return is reasonable. Moreover, the Board can evaluate various categories of expense, comparing them to the per-customer expenses of comparable carriers. As noted above, however, the parties here did not

8. This issue can be occasionally important because the Department is under the direct control of elected state officials, and utility matters can sometimes be of great interest to those officers and their constituents.

9. I hasten to observe that in this case the record casts no shadow on the Department's advocacy. Moreover, this is not such a high profile case that one might expect any political interference that would otherwise leash the Department's normally aggressive advocacy. On the other hand, the record does not clearly demonstrate effective advocacy either.

include a final cost of service analysis in the Stipulation, and so no such evaluation is possible here.

Despite my concerns, I recommend here that the Board approve the Stipulation. I do so in large part because I strongly encouraged the parties to work toward settlement. Given that history, I would recommend rejection only after discovering a gross defect in their joint product. I also am encouraged that the record here does provide at least some indirect indicia that the Department's advocacy was complete and effective. This allows me to reach the further conclusion that the Stipulation is just and reasonable.

From my inquiries at the hearing, I did learn about the amount of time and effort devoted to the docket. The Department reviewed the Companies' financial accounts and conducted seven rounds of discovery.¹⁰ The Department and the Companies also met on several occasions to exchange views and to explore the possibility of a settlement.¹¹ Most important, the Department carefully examined several important issues here, including rate base and additions, depreciation, return on equity, working capital, separations, capital structure and corporate operations expense (including transfers to the parent company and allocation of common costs).¹² As a result, although I know nothing of the tentative conclusions reached by the Department, I am fully satisfied that the Department thoroughly investigated all relevant topics in this docket.

I also rely to some degree upon the known expertise and judgment of the experienced Department staff who were assigned to the case and who testified at the hearing. When joined with their thorough knowledge of the Companies' obligations, operations and finances, this increases the probability that the Department's advocacy has been thorough and effective.

Finally, evaluation of the settlement amount suggests, on a gross level, that the bottom line is plausible. The reduction of \$536,786 from the Companies' filed revenue requirement of \$4,364,332 represents a reduction of 12.3 percent. The Stipulation also represents a reduction of current revenue by \$299,117, or 7.25 percent. These figures are in the range that one would generally expect from a carrier in a declining cost industry whose rates have not been reviewed

10. Tr. 3/14/02 at 9 (Henry).

11. Tr. 3/14/02 at 18 (Lightbody).

12. Tr. 3/14/02 at 20-23 (Morgan).

for some time.

Although I recommend approval of the Stipulation, I also suggest that the Board issue some guidance for the benefit of parties and hearing officers in future dockets. The Board might issue such guidance in a subsequent Order in this docket¹³ or elsewhere.¹⁴ Specifically, and for the reasons discussed above, I recommend that the Board announce a policy applicable to future rate cases involving an independent telephone company. Under that policy, a stipulated settlement will not be approved unless the record includes either prefiled testimony by the Department or a detailed cost of service analysis in which total revenue requirement is equal to the revenues anticipated by the Stipulation.

Other Issues

Concerning universal service, the Department and the Companies also considered whether to recommend any change in the current manner in which the Universal Service Fund ("USF") is explained to customers, and in particular whether to modify the Companies' bills to make an explicit USF credit or charge. The parties agreed that the Companies' current practice of sending periodic notices to customers is sufficient at this time. The parties acknowledge, however, that this practice may be subject to future Board review. I concur with the parties' conclusion.

I am pleased that the Stipulation articulates expectations for broadband deployment. This has been a great interest of the Board in recent years and was mentioned in the opening Order here. The parties have advanced the Board's goals by including in the Stipulation the details of currently scheduled DSL deployment and by establishing a process for reviewing subsequent DSL deployments.¹⁵

Conclusion

In conclusion, based on my review of the evidence, and in attempting to balance all of the

13. Because this proposed decision is not being circulated to the parties, I recommend that any such guidance appear in a subsequent order issued not less than one month after issuance of the Order here.

14. Since the issue is of general applicability and future effect, a variety of other forms are available, the least formal of which would be simply to announce its policy in a letter. The Vermont Administrative Procedures Act authorizes adoption of three kinds of policy statements in this context. Listed in order of increasing formality they are: practices; procedures; and rules. *See*, 3 V.S.A. §§ 801(b)(7), 801(b)(8), 831.

15. *See*, tr. 3/14/02 at 55-62 (Campbell and Woltman).

above factors, I concur with the parties' position that the overall revenue requirement presented in the Stipulation is just and reasonable. I also have reviewed the particular rate changes proposed in the Stipulation, and I similarly conclude that those are just and reasonable. I recommend that the Board approve this Stipulation. All issues being settled, this Docket should be closed.

All parties to this proceeding have waived the opportunity to file exceptions, present briefs, and make oral argument on this Proposal for Decision in accordance with the provisions of 3 V.S.A. § 811, in the event that this Proposal is substantially in the form proposed by the parties. This proposal is consistent with, and adopts the substance of the parties' proposal.

DATED at Montpelier, Vermont, this 3rd day of April, 2002.

s/Peter Bluhm
Peter M. Bluhm,
Hearing Officer

V. BOARD DISCUSSION

We accept the findings and recommendations of the Hearing Officer, and we approve the Stipulation.

The Hearing Officer has made recommendations concerning future requirements to be imposed on parties to a stipulated settlement of a rate case. He addressed the question of when the record is sufficient to support an affirmative conclusion that the rates of the Companies will be just and reasonable. For the reasons expressed in the preceding opinion, we share this concern.

We emphasize one aspect of this broader issue, that the current record does not provide any basis upon which to conclude that the terms of the Stipulation are consistent with recent Board precedent, and in particular our repeated decisions, stretching over several years, in which we have supported the inclusion of mechanisms to enhance the availability of broadband services to public and private schools served by the subject companies.

In March of 2000, we approved a Bell Atlantic (now Verizon Vermont) Education Plan in Docket 6167 that provided high-speed connections for 59 high schools within its service

territory, allowing rapid internet access and distance learning opportunities.¹⁶ The same agreement provided for more than five years of support for the "Distance Learning Network" intended to provide connectivity among the same 59 schools in Verizon's service area, the Vermont Institute for Science, Math and Technology, and the Vermont Department of Education using asynchronous transfer mode video network infrastructure.¹⁷ Our decision in Docket 6167 "applaud[ed]" Verizon's plan, and we also encouraged:

other telecommunications providers (whether incumbent local exchange companies or their competitors) to pursue similar offers, so that the distance learning capabilities enabled by this plan can be shared among all schools, not just high schools within [Verizon's] service territory.¹⁸

In a 2001 decision in a different docket, we approved a stipulation which provided further support for the successor organization to the Distance Learning Network, thereby rounding out the geographic limitations that arose in Docket 6167 and expanding at least some of those services to all Vermont schools.¹⁹ On several occasions, we also have approved stipulations to similar effect in decisions affecting the rates of independent telephone companies.²⁰

In Docket 6101, we again addressed broadband availability in a docket relating to the renewal of a Certificate of Public Good for one of the state's major cable television companies. We approved a plan from the carrier that obligated it to provide one free cable modem and

16. These benefits were provided without imposing any cost on Vermont ratepayers. *Investigation into an Alternative Regulation Plan for New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont*, Docket No. 6167, Order of 3/24/00 at 7.

17. *Id.* at 122.

18. Docket 6167, Order of 3/24/00 at 137.

19. *Petition of the Department of Public Service for Investigation of and Sanctions Against MCI WorldCom, Inc. Under 30 V.S.A. § 30 For Violation of Public Service Board Rules and Orders, and 30 V.S.A. § 208a*, Docket 6331, Order of 9/13/01 (expanded to statewide the supported services of Interactive Learning Network).

20. *See, e.g., Investigation into the existing rates of STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont*, Docket No. 6474, Order of 10/3/01 at 3-4 (funds not utilized for DSL installations used to provide connectivity to the Distance Learning Network for high schools located in Cabot and Marshfield); *Investigation into the existing rates of Waitsfield-Fayston Telephone Company, Inc.*, Docket No. 6417, Order of 4/2/01 at 16 (encouraging company to consider refund methodology that provides benefit to ratepayers in the form of "benefits equivalent to the overcollection").

connection for each school and library in its service territory. In addition, the company agreed to provide the network functionality necessary to enable schools to engage in distance learning at below market rates within each system.²¹

We would have been glad to consider a similar provision in the settlement here. Although we do approve this Stipulation, we encourage parties in future "settlement" cases to consider consistency with prior Board decisions addressing both specific financial and rate matter and, too, other service offerings such as expediting the availability of enhanced telecommunications services (such as broadband) to schools or libraries within the service area of the incumbent carrier.

On a procedural level, the Hearing Officer made recommendations concerning minimum record requirements for future dockets. We agree that these questions do not need to be resolved in the present docket, but we also agree that it could be useful to give the parties some guidance on this point. We note the Hearing Officer's footnote that if we take subsequent action on matters involving stipulations, that action might, depending upon the circumstances, take the form of an announced practice, a procedure, or a rule.²² We invite comments on those issues from the parties in this docket and from others, including members of the public, utilities and members of the utility bar. Those comments should be filed not later than Monday, May 13, 2002. Such comments will be filed outside this docket, and need not be sent to the service list in this docket. The Clerk of the Board will keep a file of comments received as a public record.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted, and his recommendations and conclusions (except as to procedural rules for future rate cases) are affirmed.
2. The Stipulation between Ludlow Telephone Company, Northfield Telephone

21. *Petitions for renewal of Certificates of Public Good held by Mountain Cable Company and Better TV, Inc. of Bennington, both d/b/a Adelphia Cable Communications*, Docket No. 6101, Order of 4/28/00 at 127 (additional services were offered to municipalities).

22. *See*, 3 V.S.A. §§ 801(b)(7), 801(b)(8), 831.

Company, Perkinsville Telephone Company and the Vermont Department of Public Service dated March 8, 2002, is approved.

3. Ludlow Telephone Company, Northfield Telephone Company and Perkinsville Telephone Company shall file revised tariff rate pages incorporating the rates contained in the Stipulation within 30 days from the date of this Order.

4. This docket shall be closed upon filing and approval of tariffs consistent with the above.

Dated at Montpelier, Vermont, this 11th day of April, 2002.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 11, 2002

ATTEST: s/Judith C. Whitney

Acting Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.